BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of:	)	
	)	
Telecommunications Services Inside Wiring Customer Premises Equipment	)	CS Docket No. 95-184
	)	
In the Matter of:	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring	)	MM Docket No. 92-260

REPLY COMMENTS OF RCN TELECOM SERVICES, INC.

RCN Telecom Services, Inc. ("RCN"), through its undersigned counsel, hereby submits these reply comments in response to the Commission's Further Notice of Proposed Rulemaking released on September 29, 2004 (FCC 04-228) and the initial comments filed in response thereto.[1] As clearly supported by the majority of the comments and supporting declarations submitted in response to the Commission's *Sheet Rock NPRM*, home run wiring located behind sheetrock is "physically inaccessible" within the meaning of the Commission's rules at section 76.5(mm)(4) for purposes of determining the demarcation point between home wiring and home

[1] In the Matter of Telecommunications Services Inside Wiring, Customer Premises Equipment, CS Docket No. 95-184, In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring, MM Docket No. 92-260, *Further Notice of Proposed Rulemaking*, FCC 04-228 (rel. Sept. 29, 2004) (hereinafter, "*Sheet Rock NPRM*").

run wiring.[2] Not surprisingly, the only party to disagree with this assessment is the National Cable & Telecommunications Association (NCTA), an organization representing the incumbent cable television operators who have both little experience post-wiring multiple dwelling unit buildings ("MDUs") and little incentive to support rules and policies that promote competition.

NCTA's Assertions Are Not Credible

NCTA's comments are flawed in several respects. First, and foremost, in its comments, NCTA only addresses the degree of difficulty associated with cutting a hole in and repairing sheetrock, and fails to address the difficulties and costs associated with actually getting the subscriber line back to the junction box, which is the real issue here. NCTA seems to overlook the purpose of the rule at issue, namely, to afford viable access to cable home wiring so that consumers may have the option to select among competing multi-channel video programming providers ("MVPDs"). Determining the cost of cutting a hole in a piece of sheetrock – even if the cost of that limited action is only $25, as NCTA claims – does not complete the analysis. Rather, the question of ultimate importance is whether placing the demarcation point behind sheetrock impedes competitors' access to cable inside wiring and, accordingly, deprives consumers of access to competitive MVPD services. Second, NCTA claims, but provides no factual support for the notion, that accessing wiring behind sheetrock is no more difficult than accessing wiring in molding, and causes no structural damage or lasting esthetic effects on the

[2] *See* Comments of Independent Multi-Family Communications Council (IMCC Comments) filed in November 15, 2004; Comments of Verizon filed November 15, 2004 (Verizon Comments); Comments of Real Access Alliance and Community Associations Institute filed November 15, 2004 (RAA/CAI Comments).

walls or ceiling that must be cut open to access the wires.[3] This position is simply not credible, as the RCN, RAA/CAI and IMCC Comments make clear. If cutting into the sheetrock, fishing the wires, and repairing the resulting damage were really as easy and inexpensive as NCTA claims, there would be no reason for MDU owners to object to the process. Of course, NCTA and its members have little experience with, and therefore virtually no basis for commenting on, the difficulty and cost associated with post-wiring multiple units within MDUs, insofar as NCTA represents incumbent MVPDs whose wiring was, in nearly every instance, the first wire installed to the customer premises, often at the time of the initial building construction.

It is important to note that the United States Court of Appeals for the District of Columbia Circuit, in its decision on NCTA's challenge to the Commission's prior order finding that wiring behind sheetrock is physically inaccessible, did not agree with NCTA that sheetrock fails to meet the definition of physical inaccessibility for purposes of the Commission's cable inside wiring rules. Rather, the D.C. Circuit merely concluded that the prior order failed adequately to articulate the factual support for the Commission's commonsense conclusion that wiring behind sheetrock is difficult and costly to access.[4]

The Building Owner's and Other Commenters Support RCN's Assertions

RCN's assertions regarding the cost and difficulty associated with accessing wiring behind sheetrock are supported by the comments of the Real Access Alliance & Community

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[3] It is not necessary to conclude that cutting through sheetrock is as difficult as boring into brick or cinder block, in order to find that wiring behind sheetrock is "physically inaccessible." The Commission merely used those structural elements, which clearly are physically inaccessible, as a point of reference in its prior order, correctly concluding that sheetrock is more like those elements than like molding.

[4] *See NCTA v. FCC*, No. 03-1140, 2004 WL 335201 (D.C. Cir. Feb. 17, 2004, unpublished).

Associations Institute ("RAA/CAI"), the Independent Multi-Family Communications Council ("IMCC"), and Verizon. These commenters confirm that cutting through sheetrock and fishing wiring in order for a competitive MVPD to connect to a tenant's home wiring is expensive and involves significant disruption, *i.e.*, that cable inside wiring behind sheetrock in fact meets the Commission's definition of physical inaccessibility for purposes of the cable inside wiring rules.

The RAA/CAI, representing multiple associations of building owners and managers, confirms that sheetrock in MDUs is a preexisting structural element, providing, among other things, firewall capability subject to the International Building Code. The RAA/CAI asserts, and provided multiple declarations to support its assertion, that accessing wiring behind sheetrock is physically difficult, as is restoring the walls and ceilings that have been breached back to their original condition:

> . . . [O]btaining access to wiring behind sheetrock requires the removal of sizable pieces of sheetrock, not only at the nominal demarcation point 12 inches outside a unit, but at numerous other places, either along a corridor or inside different units. Often property owners do not know exactly where the wiring is behind a wall, and finding hundreds of demarcation points within a typical apartment building is not a precise science. Restoring a wall requires a great deal of effort, because the smoothness and texture of the surrounding surface must be matched. Paint finishes much be matched exactly, which is difficult because paint often changes color as it ages. Thus, entire walls must be repainted.

RAA/CAI Comments at 6 (footnotes omitted). Based on the degree of difficulty involved, the RAA/CAI concludes "The Associations can offer no reliable cost information in this area. It appears that, whatever the cost would be, it is prohibitive." *Id.* at 8.

The IMCC does offer cost data, which is in line with that included in RCN's Comments and in sharp contrast to NCTA's assertion that the cost of cutting through sheetrock is as low as $25: "Our estimate of additional work for the process is 2-4 hours per unit. Therefore, for one such hole it will add $1510.00 to $250.00 to the cost of wiring that unit. In a typical 200-unit

building that adds up to $40,000.00." IMCC Comments at 7. The IMCC further confirms that breaking through the sheetrock, fishing the wires, and restoring the walls or ceilings to their original condition renders wiring behind sheetrock "physically inaccessible" within the meaning of the Commission's rules.

Verizon also contends that it is, indeed, expensive to cut through, replace, spackle, sand, and repaint or rewallpaper sheetrock, difficult to locate and connect to wiring located in walls, ceilings, and between floors, and that doing so presents safety and structural issues. *See* Verizon Comments at 3, 4 and 5-6, and Declaration of P. Kelley Dunne. Moreover, Verizon, like the RAA/CAI and IMCC, confirms that MDU owners typically prohibit competing MVPDs from post-wiring units in their buildings, rather than incur the disruption involved in allowing competitors to access home wiring when the demarcation point is located in walls, ceilings, or floors.

Conclusion

In sum, it has been clearly demonstrated and substantiated through the declarations on file in this proceeding that home run wiring located behind sheetrock is "physically inaccessible" within the meaning of the Commission's rules at section 76.5(mm)(4) for purposes of determining the demarcation point between home wiring and home run wiring. Accordingly, the Commission's rule as set forth in section 76.5(mm) (4) and the applicable Note as stated in the Commission's *Reconsideration Order*, should stand, and if necessary, be clarified to indicate

that an MDU owner's refusal to grant access to the wiring behind sheetrock renders it physically inaccessible.

Respectfully submitted,

s/_____
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Dated: December 6, 2004